IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY FIRST DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 494 of 2004

Between:

M/s. Sri Radhakrishna Vegetable Oil Products Co., Taremella Road, Kallur R.S. - 515 774, Garledinna Mandal, Anantapur District, rep. by its Proprietor Sri K.Ramprasad.

... PETITIONER

AND

1 The Commercial Tax Officer (Audit), Office of the Deputy

Commissioner (CT), Kurnool
2 The Commercial Tax Officer - 1, Anantapur.
3 The Assistant Commissioner (CT) (LTU), Kurnool.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ or Order or direction declaring the action of the Respondents in collecting the five cheques dated 26.11.2003 for Rs. 4,49,513/- without issuing statutory assessment order and demand, as illegal and without jurisdiction ad consequently direct the Respondents to return the cheques and further direct the Respondents to return the complete books of accounts and records seized on 29.8.2003 and pass such other others in the interests of justice.

Counsel for the Petitioner: MR.P.SRINIVASA REDDY

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court made the following:

O R D E R (Per Hon'ble Sri Justice Bilal Nazki)

Heard the learned counsel for the parties. Counter has also been filed. The matter is decided at this stage with their consent.

The petitioner challenges the action of the respondents in collecting five cheques dated 26.11.2003 for Rs.4,49,513/- from him. These cheques have not been encashed, as after issuance of the cheques, instructions were issued to the bank not to honour them. The grievance of the petitioner is that liability is imposed upon him without there being any assessment order or demand raised against him. In the counter, it has not been denied that there is no order or demand against the petitioner. But, it is submitted that the petitioner offered money voluntarily and made a statement. Obviously, even when the books of accounts were checked during inspection, nothing was communicated to the petitioner as far as any liability after passing an order with regard to the controversy.

It is only stated in the counter that the petitioner admitted the fact of non-accounting of the purchases in the regular book of accounts through the statement. Even after the said statement, no formal order was passed. But, it is stated that the petitioner came forward and asked to work out the tax, and paid tax by way of cheques. Obviously, such a mode is not permissible which has already been held in **Annam Jewellers Vs. Deputy Commercial Tax Officer and Another**.

Therefore, we allow this writ petition, direct the respondents to return the cheques to the petitioner. However, the respondents on the basis of inspection, are at liberty to proceed against the petitioner in accordance with law. No costs.

Sd/- (C.V.RAMA KRISHNA)

ASSISTANT REGISTRAR

To

1 The Commercial Tax Officer (Audit), Office of the Deputy

Commissioner (CT), Kurnool
2 The Commercial Tax Officer - 1, Anantapur.
3 The Assistant Commissioner (CT) (LTU), Kurnool.

4 2 CCs to G.P for Commercial Taxes, High Court of A.P.,Hyd. (OUT)

5 2 CD copies.

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